

Group II: claims 25-51, drawn to a product, classified in class 257, subclass 301.

The Office argues that Groups I and II are distinct because the product as claimed can be made by another and materially different method, e.g., a conventional wet etching technique instead of plasma etching.

Applicant elects, with traverse, to prosecute the invention of Group I, claims 1-24. Applicant does NOT traverse the Office's classification of the groups of inventions as distinct, merely the Office's reasoning because the Office has not satisfied the criteria for establishing a proper restriction requirement.

MPEP § 803 describes the two criteria necessary for a proper restriction requirement: (A) the inventions must be independent or distinct as claimed; and (B) there must be a serious burden on the examiner if restriction is required. *See* MPEP § 803 ¶ 3 (emphasis added). With regard to the first criterion, Applicant does not traverse the classification of the inventions as distinct. However, Applicant believes that products manufactured by the conventional wet etching technique suggested by the Office do not exhibit many of the physical characteristics of the product as claimed in claims 25-51.

As well, the Office has not met the second criteria for a proper restriction requirement. The Office has not substantiated—much less alleged—that there exists a serious burden on the examiner. Indeed, any allegation of an undue burden on the examiner is conspicuously absent in the Office's reasoning. Having not substantiated this second criterion, the Office has not established a proper restriction requirement.


For these reasons, the Office has not established a proper restriction requirement between Groups I and II.

Conclusion

For the above reasons, Applicant respectfully requests the Office to withdraw the restriction requirement and examine the pending claims.

If there is any fee due in connection with the filing of this Response, including a fee for any extension of time not accounted for above, please charge the fee to our Deposit Account No. 18-0013\40013-0002.

Respectfully Submitted,

By   
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